85-1242

Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

VINCENT HALTER, PETITIONER

v.

SECRETARY OF THE TREASURY OF THE UNITED STATES, AND UNKNOWN AGENTS OF THE INTERNAL REVENUE SERVICE, RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether Congress has the power to delegate to the Secretary of Treasury and the Internal Revenue Service the authority to investigate the private, unregulated affairs of an individual.

2. Whether Congress has the power to delegate to the Secretary of Treasury and the Internal Revenue Service the authority to compel a wage earner to involuntarily sign a form W-4 under penalty of perjury when exercising his constitutionally protected right to work for a living.

3. Whether the court has authority to extend the provisions of the Anti-Injunction to situations not included by Congress.

4. Whether the Secretary of State, Philander P. Knox, correctly certified the Sixteenth Amendment as ratified although acknowledging the errors existing in the certified copies of Resolutions passed by the Legislatures of those States ratifying the amendment.

5. Whether the court correctly sanctioned petitioner for exercising his First Amendment right to freedom of speech by petitioning for redress of grivances from actions of public servants when the issues of his complaint have not been squarely addressed.

TABLE OF CONTENTS

Page

Opinions below 2
Jurisdiction 2
Constitutional and statutory provisions involved 2
Statement 3
Reasons for granting this writ 4
Conclusion 14
Appendix A:
Memorandum of the Court of Appeals, of August 20, 1985 ..... 1a
Decision and order of the District Court of July 26, 1984 ..... 2a
Journal Entry of Judgment of July 26, 1985 ..... 3a
Order denying Petition for Rehearing 4a

TABLE OF AUTHORITIES

Cases:
Allgeyer v. Louisiana, 165 U.S. 578 (1897) 7
Baldrige v. Shapiro, 455 U.S. 355 (1982) 8
Boday v. United States, 759 F. 2d 1472 (9th Cir. 1985) 12
Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1925) 8
Boyd v. Alabama, 94 U.S. 645 (1877) 12
Boyd v. United States, 116 U.S. 616 (1886) 12
Brooklyn Savings Bank v. O'Neill, 324 U.S. 697 (1945) 9
Brushaber v. Union Pacific Railroad Co., 240 U.S. 1 (1915) 7
Burdeau v. McDowell, 256 U.S. 465 (1920) 4
Gattuso v. Percorella, 733 F.2d 709 (9th Cir. 1984) 7
Hale v. Henkel, 201 U.S. 43 (1906) 6
Heflin v. United States, 358 U.S. 415 (1959) 9
Hobbs v. McLean, 117 U.S. 567 (1885) 11
Isbill v. Stovall, 92 S.W.2d 1067 ( ) 10
Kilbourn v. Thompson, 103 U.S. 168 (1880) 5

McGrain v. Daughtery, 273 U.S. 135 (1927) 5
Miranda v. Arizona, 384 U.S. 436 (1966) 10
Olmstead v. United States, 277 U.S. 438 (1927) 5
Quinn v. United States, 349 U.S. 155 (1955) 5
Sinclair v. United States, 279 U.S. 263 (1928) 5
United States v. Bulter, 297 U.S. 1 (1936) 10
United States v. Hill, 123 U.S. 681 (1887) 8
United States v. Robel, 389 U.S. 258 (1967) 5
United States v. Romero, 640 F.2d 1014 (9th Cir. 1981) .. 12
United States v. States of Louisiana, Texas, Mississippi, Alabama, and Florida, 363 U.S. 1 (1960) 11
United States v. White, 322 U.S. 694 (1944) 6

Constitution, statute and regulation:

United States Constitution:

Article I, Section 2 3
Article I, Section 7 3
Article I, Section 8 2
Article III, Section 2 2
First Amendment 2
Fourth Amendment 2
Fifth Amendment 2
Sixteenth Amendment 2

Statutes:

Public Law 91-508, Title I, aka Bank Secrecy Act . passim
Corporation Excise Tax Act of 1909 2
Internal Revenue Code of 1939 8
Internal Revenue Code of 1954 10
26 USC 3402 5
26 USC 7402 (a) 8
26 USC 7402 (f) 8
26 USC 7421 (f) 3
26 USC 7602 5

26 USC 7604 (a) 8
26 USC 7607 8
26 USC 7609 5
26 USC 7621 (a) 8
26 USC 7622 (a) 8
26 USC 7701 (a) (11) (A) 12
28 USC 1331 10
28 USC 1340 8

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

Vincent Halter, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Ninth Circuit Court of Appeals entered in the above-entitled case on August 20, 1985.

OPINIONS BELOW

The opinion of the Ninth Circuit Court of Appeals is unreported and is printed in Appendix A hereto, infra, page 1a. The decision and order of the District Court of the Ninth District is printed in Appendix A hereto, infra, page 1a. The Journal Entry of Judgment of the District Court of the Ninth Circuit is printed in Appendix A hereto, infra, page 1a.

JURISDICTION

The judgment of the Ninth Circuit Court of Appeals (Appendix A, infra, page 1a) was entered on August 20, 1985. A timely petition for rehearing was denied on October 21, 1985 (Appendix A, infra, page 1a). The jurisdiction of the Court is invoked under Title 28, section 1254(d).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment I

(In pertinent part). Congress shall make no law. . .abridging the freedom of speech, or of the right of the people to petition for redress of grivances.

United States Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment V

(In pertinent part). Nor shall (any person) be deprived of life, liberty, or property, without due process of law.

United States Constitution, Amendment XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration. Proposed July 2, 1909; ratified February 3, 1913; certified February 25, 1913.

Bank Secrecy Act of 1977, Public Law 91-508

(In pertinent part), Title I, Section 101.21(b) Where the Secretary of the Treasury (referred to in this section as the 'Secretary') determines that the maintenance of appropriate types of records and other evidence by insured banks has a high degree with the bank of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account. The Secretary may make such exemptions from any requirement otherwise imposed under this subsection as are consistent with the purposes of this section.

The Anti-Injunction Act, Title 26, section 7421(a)

(In pertinent part), . . . no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

STATEMENT

Petitioner applied to the court for injunctive relief from the Respondents' investigating his private affairs until such time that proof was supplied to him that Congress has such power to delegate and, in fact, has delegated this authority. Petitioner also asked for proof that Congress has the power to delegate to the Respondents the authority to compel the wage earner to sign a form W-4 to have withheld amounts from his earnings prior to the time established by Congress that a lawfully assessed tax is due. Jurisdiction was invoked in the court in the first instance under 28 U.S.C. 1331 as arising under the Constitution and the laws of the Constitution and the laws of the United States.

Rather than addressing petitioner's complaint that no such authority exists, the court dismissed the case as falling within the prohibition of the Anti-Injunction Act by relying on case law which in not one instance concerned the claims that the Secretary of Treasury and Internal Revenue Service agents are exceeding their statutory grants of authority. The court did not rely on precedent which concerned a private individual and his financial records which are protected by law as opposed to cases involving artificial entities' accounting records which do not fall within the provisions of the Fourth Amendment. Neither did the court rely on precedent which

concerned the authority of the Secretary of Treasury and Internal Revenue Service to compel the signing of a form W-4 to prepay a tax before it is due.

Believing that the issues of his complaint should be addressed by the court, an appeal was filed to request that the petitioner's case be remanded to the district court. The court based its denial of appeal on precedent which not not address the above stated claims of the complaint. Petitioner also questions whether the Secretary of State Philander Knox correctly certified the sixteenth amendment to the Constitution of the United States was ratified by the States.

It was because petitioner believed he was entitled to have his questions addressed of whether the complained of actions are within the authority of Congress to delegate that he applied to the court of appeals. At the "Commissioner's" suggestion, the court granted sanctions for bringing a frivolous appeal which challenged the statutory authority of the Secretary of Treasury and the agents for the Internal Revenue Service.

Petitioner's request for rehearing and suggestion for rehearing en banc was denied.

REASONS FOR GRANTING THIS WRIT

1. Where the Constitution has not granted power to Congress to investigate the private affairs of individuals, it is axiomatic that this authority cannot be delegated to the respondents. The case cited by the Ninth Circuit Court of Appeals in support of the respondents is clearly distinguishable.

By citing *Donaldson v. United States*, 400 U.S. 517, 522 (1971), as authority that the issuance of summons under 26 U.S.C. 7602 does not violate the Fourth Amendment, the court did not confront Halter's argument that because Congress does not have the power to investigate an individual's private affairs, it cannot delegate such authority to the Secretary of Treasury. The matter brought before the court in *Donaldson v. United States*, supra, concerned a creation of the state, a corporation. Further distinction is made between that case and Halter's as the *Donaldson* records were accounting records which were not compelled under threat of penalties by the government. *Burdeau v. McDowell*, 256 U.S. 465 (1920).

It is believed by the petitioner that his constitutionally protected rights of privacy and liberty have been and are violated by the respondents by their acts of investigating his private affairs and by infringing his liberty to earning a living by compelling that he sign a form W-4 for the purpose of having withheld from his earnings amounts which are neither due nor owing as a tax. A complaint for infringment of his constitutional rights was filed as a first amendment redress of grivances against the respondents for implementing Internal Revenue Code regulations 26 USC 7602 and 26 USC 3402 against him.

Halter not only relied on the Constitution for his complaint, but also on the rulings of the Supreme Court. Inquiry is limited to subjects on which legislation may be had. *Quinn v. United States*, 349 U.S. 155, 161, 99 L.Ed 964 75 S.Ct 668, 51 ALR2d 1157 (1955). This court has repeatedly stated that Congress' power of investigation is limited, and that "Inquiry into personal and private affairs is precluded." See *Kilbourn v. Thompson*, 103 U.S. 168, 190, 26 L.ed. 377; *McGrain v. Daugherty*, 273 U.S. 135, 173-174, 47 S.Ct. 319, 328, 71 L.Ed. 580; *Sinclair v. United States*, 279 U.S. 263, 292, 49 S.Ct. 268, 271, 73 L.Ed. 692.

A summons for the financial records of petitioner was issued pursuant to 26 U.S.C. 7609. The Secretary was granted the authority by Congress in the so-called Bank Secrecy Act of 1970 to compel from banks "records" which "have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." The provisions for the compelled recordkeeping, petitioner has suggested to the court, vest impermissily broad authority in the Secretary of Treasury, see *United States v. Robel*, 389 US 258, 269, 19 L Ed 2d 508, 88 S.Ct. 419 (1967) when the compulsory recordkeeping requires and makes available for the government a fairly accurate account of this individual's religion, ideology, opinion, and interests. Cf. *Burdeau v. McDowell*, 256 U.S. 465, 476 (1920). These are areas which fall within the "expection of privacy" category. *California Bankers v. Shultz*, 416 U.S. 21, Mr. Justice Douglas dis. op., at p. 89.

Although the recordkeeping provisions were held not to be a violation of the depositor's fourth amendment rights, e.g., *Donaldson v. United States*, 400 U.S. 517, 522 (1971), it has not been contended that compelled records are a violation of a corporation's

right to privacy, e.g., *Hale v. Henkel*, 201 U.S. 43 (1906), however, corporations can claim no equality with individuals in the enjoyment of a right to privacy, cf. *United States v. White*, 322 U.S. 694; 88 L.Ed. 1542, 64 S.Ct. 1248, 152 ALR 1201. Authorizing the Secretary of Treasury to compel information to be recorded which, it is alleged, subsequently deprives this individual of his constitutional claim to privacy in his affairs is contended to be outside the scope of authority which Congress can delegate.

An impartial consideration of the issue Halter brought to the court would have included Supreme Court declarations concerning the individual's rights, as distinguished from the artificial entity, e.g. *Donaldson v. United States*, supra.

"Although the 'right to be let alone — the most comprehensive of rights and the right most valued by civilized men,' Brandeis, J., dissenting in *Olmstead v. United States*, 277 US 438, 471, at 478 [72 L Ed 944, 48S Ct 564, 66 ALR 376], is not confined literally to searches and seizures as such, but [that right] extends as well to the orderly taking under compulsion of process, *Boyd v. United States*, 116 US 616 [29 L Ed 746, 6 S Ct. 5381], *Hale v. Henkel*, 201 US 43, 70 [50 L Ed 652, 26 S. Ct. 370].

The Court has held "that the mere maintenance of the records by the banks under the compulsion of the regulations invaded no Fourth Amendment right of any depositor," *California Bankers Association v. Shultz*, 416 US 21, at 54, but the crux of this complaint is not the maintenance of the records, instead concerns the power of Congress to delegate to the Secretary of Treasury the broad authority to lay down blanket commands that "records" be required which include those of private individual's affairs. The fact that one has disclosed private papers to the bank, for a limited purpose, within the context of a confidential customer-bank relationship, does not mean that one has waived all right of the privacy of the papers. *California Bankers Association v. Shultz*, supra, Mr. Justice Marshall, dis, op. at p. 95, 96.

The essence of petitioner's complaint was expressed in Mr. Justice Douglas' dissenting opinion, *California Bankers Association v. Shultz*, supra, at p. 90:

"The Fourth Amendment warrant requirements may be removed by constitutional amendment but they certainly cannot be replaced by the Secretary of the Treasury's finding that certain information

will be highly useful in criminal, tax, or regulatory investigations or proceedings."

"I also agree in substance with my Brother Brennan's view that the grant of authority by Congress to the Secretary of the Treasury is too broad to pass constitutional muster. . . ."

And by Mr. Justice Brennan in his dissenting opinion, *supra*, at p. 91:

"In the case of the Bank Secrecy Act, also potentially involving First, Fourth, and Fifth Amendment rights of the vast majority of our citizenry, it exceeds Congress' constitutional power of delegation to empower the Secretary of the Treasury to require whatever reports and records he believes to be possessed of a "high degree of usefulness" where the purpose is to further "criminal, tax, or regulatory investigations or proceedings."

Petitioner's claim that Congress does not have the power to delegate to the respondents authority to investigate private affairs of individuals through the compelled recordkeeping provisions of the Bank Secrecy Act, P.L. 91-508, has remained uncontradicted by respondents. It is urged that the petition for writ be granted to address the question of whether it exceeds Congress' constitutional power of delegation to authorize the Secretary of the Treasury to require whatever records he believes to be possessed of a "high degree of usefulness" where the purpose is to further "criminal, tax, or regulatory investigations or proceedings" without any constitutional restrictions.

2. Within this same question of whether Congress has power to delegate is the matter of the Secretary of Treasury's regulation requiring an employee to sign under penalty of perjury a form W-4 authorizing an amount to be withheld from the employee's earnings for the purpose of prepaying a tax which has not been established as due and owing.

Petitioner has claimed that since our country's beginning, the concept that, "the property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable" has been held as a fundamental and inherent personal liberty of the Fifth Amendment. *Allgeyer v. Louisiana*, 165 U.S. 578. It is further claimed that the Sixteenth Amendment did not extend the taxing power of Congress, *Brushaber v. Union*

Pacific Railroad Co., 240 U.S. 1 (1915). The Court reiterated that "income" has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the Sixteenth Amendment, and in the various revenue acts subsequently passed. *Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 169 (1926).

The question of whether Congress has the power to delegate to the Secretary of Treasury authority to extend the Sixteenth Amendment by promulgating a regulation to compel a tax be withheld from the wage earner and paid to the Treasury prior to the time a tax is lawfully assessed has not been addressed by the Court. The case cited as authority by the Ninth Circuit Court of Appeals in apparent response to this claim dealt with an argument erroneously attributed to Halter by the court: wages are not income, citing *Gattuso v. Pecorella*, 733 F.2d 709, 710 (9th Cir. 1984).

The case cited by the Ninth Circuit Court is distinguishable in the instant case as Halter has not made the claim that "wages are not income". Declaring that wages are not income does not address the matter of whether Congress has the power to delegate to the Secretary the authority to compel a tax be paid prior to the time of its lawful assessment.

Halter has argued that the Secretary of Treasury, the Internal Revenue Service and the courts have jurisdiction over "revenue laws" which derive from the Constitution, Article I, section 8. *United States v. Hill*, 123 U.S. 681 (1887). The Internal Revenue Code of 1939 makes the claim that the Sixteenth Amendment amended Article I, section 2, clause 3 in the phrase "direct taxes shall be apportioned". Internal Revenue Code of 1939, Appendix, Part II — Provisions of the Constitution Relating to Taxation (in pertinent part). Also see *Baldridge v. Shapiro*, 455 U.S. 345, 353 n.8 (1981). The conclusion drawn by Halter, and not refuted by the respondents, is (1) that duties, imposts and excise taxes arise under Article I, Section 8 of the Constitution; (2) Income taxes are direct taxes arising under Article I, Section 2; and (3) taxes on wages as income are direct taxes not within the jurisdiction of the respondents nor the courts under 28 U.S.C. 1340, 26 U.S.C. 7402(a), 7402(f), 7604(a) or 7421(a).

The regulations promulgated by the Secretary and implemented by the Internal Revenue Service [26 U.S.C. 3402] would necessarily extend the "revenue laws" of Article I, section 8 [26 U.S.C. 7621(a) and 7622(a)] to new and excepted subjects arising under under Article I, section 2 as amended by the Sixteenth Amendment.

Halter has not argued "wages are not income" as has been erroneously attributed to him. He does nevertheless contend that not all "income" is subject to direct taxation in the context of the Internal Revenue Code of 1954. Within the context of the internal revenue laws, the Court in *Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 169 (1926) reiterated that income is taken to mean the same thing as used in the Corporation Excise Tax Act of 1909 which would arise under Article I, section 8. The Ninth Circuit Court of Appeals did not correctly state the petitioner's position when rendering its decision.

Petitioner's claim that it is a violation of his constitutional right of liberty to be compelled to sign a form W-4 for the purpose of prepaying a tax which has not been assessed as a condition of exercising his right to work for a living has remained uncontested.

It is urged that a writ of certiorari be issued to review these decisions involving federal questions of substance not theretofore determined by the Supreme Court. *Brooklyn Sav. Bank v. O'Neil*, N.W. 1945, 65 S.Ct. 895, 324 U.S. 697, 89 L.Ed. 1296, rehearing denied 65 S.Ct. 1189, 325 U.S. 893, 89 L.Ed. 2005.

Additionally, the Ninth Circuit Court of Appeals has issued a decision which directly conflicts with the Supreme Courts many holdings concerning the individual's inalienable rights to privacy and liberty.

Apparent conflict between the decision and Supreme Court's holdings in another case impelled that court to grant certiorari. *Heflin v. U.S.*, Ala. 1959, 79 S.Ct. 451, 358 U.S. 415, 3 L.Ed. 2d. 407.

3. The Court is without power to extend the provisions of the Anti-Injunction Act to include situations which Congress did not.

Congress enacted the Anti-Injunction Act, 26 U.S.C. 7421(a), to prohibit the court from enjoining the assessment or collection of any tax. Petitioner has challenged the with-in complained of authority of the Secretary of Treasury, and the power of Congress to delegate that authority, as a trespass on his constitutionally protected rights.

A "court" is an agency of the sovereign created by it directly or indirectly under its authority,. . .for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof. . ." *Isbill v. Stovall*, Tex. Civ. App., 92 S.W. 2d 1067, 1070. It was for this purpose that the jurisdiction of the court was invoked under 28 U.S.C. 1331 as a case arising under the constitution and the laws of the United States to demand natural rights guaranteed and protected by the Constitution.

"Where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them." *Miranda v. Arizona*, 384 U.S. 436 (1966).

The Bank Secrecy Act of 1970, P.L. 910598 and the Internal Revenue Code of 1954 are two laws passed by Congress which as applied to Halter as a private individual abrogate his rights as secured by the Constitution. Petitioner suggests the provisions of the Anti-Injunction Act cannot be extended to deny the court's jurisdiction to exercise its power to hear and determine his claim that regulations promulgated pursuant to these laws are in excess of the respondents' authority because Congress could not constitutionally delegate such authority.

The Supreme Court, in *United States v. Butler*, 297 U.S. 1, 62 56 S.Ct. 312, 318, 90 L.Ed. 477, declared:

"The Constitution is the supreme law of the land ordained and established by the people. All the legislation must conform to the principles it lays down. When an act of Congress is appropriately challenged in the Courts as not conforming to the constitutional mandate, the judicial branch of the government has only one duty: to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former."

It is prayed that a writ of certiorari should issue to review the judgment of the Ninth Circuit Court of Appeals in finding it was barred from jurisdiction by extending the provisions by the Anti-Injunction Act 26 U.S.C. 7421(a) to a case claiming public servants exceeded their statutory authority. The court cannot insert the exception. When a provision is left out of a statute, either by design or mistake of the legislature, the courts have no power to supply it. To do so would be to legislate and not to construe. *Hobbs v. McLean*, Supreme Court 1885, p. 579.

4. After receiving a Memorandum from the Office of the Solicitor advising that thirty-three states had errors in their resolutions and Minnesota did not transmit to the Department a copy of the resolution, the Secretary of State Philander C. Knox fraudently certified the Sixteenth Amendment to the Constitution had been ratified.

Although Halter did not make any claims about the sixteenth amendment having been ratified, the Ninth Circuit Court of Appeals erroneously attributed this argument to him and sanctioned him for being "frivolous".

The court cited *Baldrige v. Shapiro*, 455 U.S. 345, 353 n.8 (1981), as authority that the Sixteenth Amendment has been ratified. Even a cursory examination of *Baldrige's* footnote 8 indicates that the court was not even faced with a question concerning the Sixteenth Amendment. The entire matter was covered in one sentence:

"The ratification of the Sixteenth Amendment in 1913 amended Article I, section 2, to provide for direct taxation without apportionment."

The respondents and the court maintain the Sixteenth Amendment is the carte blanche of authority over the private individual. Although the erroneously attributed argument was declared to be "frivolous", the Supreme Court is requested to take judicial notice of the historical documents in the National Archives relating to the certification of the Sixteenth Amendment by the Secretary of State Philander C. Knox. *United States v. States of Louisana, Texas, Mississippi, Alabama, and Florida*, 80 S.Ct. 961, 363 U.S. 1, 121, 4 L.Ed. 2d 1025, 1096, rehearing denied 81 S.Ct. 36, 364 U.S. 856, 5 L.Ed. 2d 80, supplemented 86 S.Ct. 419, 382 U.S. 288, 15 L.Ed. 2d 331.

The Memorandum from the Office of Solicitor, dated February 15, 1915, concerned the "Ratification of the 16th Amendment of the Constitution of the United States" described to the Secretary the "Errors in Resolutions of State Legislatures in quoting the Proposed 16th Amendment". Thirty-three states had errors in the resolutions, Minnesota did not transmit to the Department a copy of the resolution passed by the legislature of that state and Kentucky had recorded its vote 22 negative, 9 affirmative which was reported as ratifying resolution. It was further noted in the Memorandum "that under the provisions of the Constitution a legislature is not authorized to alter in any way the amendment proposed by Congress." (Copy attached as Exhibit A in Petition for Rehearing.)

The Supreme Court has a long standing policy of only deciding the points before it. *Boyd v. Alabama*, 94 U.S. 645 (1877). Other challenges have been made to the validity of the 16th Amendment but not the question of its fraudulent certification.

5. Sanctions should not be imposed against Halter because he appealed the decision of the District Court in good faith as his claim that the public servants exceeded their statutory authority has not been denied by respondents nor squarely addressed by the court.

The Ninth Circuit Court of Appeals imposed sanctions against Halter at the request of the "Commissioner", (Court of Appeals Memorandum, p.3.) charging he brought a "frivolous appeal".

Halter sued out the complaint against the Secretary of the Treasury. "The term Secretary of the Treasury means the Secretary of the Treasury, personally, and shall not include any delegate of his." 26 U.S.C. 7701(a) (11) (A). It is suggested that the court is without authority to substitute his delegate, the Commissioner, as the intended respondent of Halter's complaint and impose sanctions at the Commissioner's request.

The court stated petitioner's argumentw "wholly lack merit." The complaint that the respondents do not have delegated authority to implement 26 U.S.C. 7602, 26 U.S.C. 7609, and 26 U.S.C. 3402 against him was not denied or refuted.

The court attributed arguments to Halter which he did not make, i.e., wages are not income, Halter is not a person under Internal Revenue Code and the Sixteenth Amendment was not ratified.

Halter does argue that 26 U.S.C. 7602 does violate the fourth amendment rights of the individual, clearly distinguishable from the corporate taxpayer in *Donaldson v. United States*, supra. as discussed above.

Halter noted in his opening brief, page 12, 13, his belief that if a bill, i.e., TEFRA, is to originate in the House but is written in the Senate that does not fulfill the mandate of the Constitution, Article I, section 7, clause 1. He does not believe it is "frivolous" not to agree with the court in all matters. For example, in this instant case where he submitted a complaint to the court for violation of his constitutional rights, and the court responds to arguments which he did not make.

Further, the respondents have not made a claim, much less produced evidence, that Halter is a "person" under 26 U.S.C. 7203 [citing *United States v. Romero*, 640 F.2d 1014, 1016 (9th Cir. 1981)]. It seems inappropriate that the court would present an argument for respondents.

The court declared it to be frivolous to assert that the Internal Revenue Code, which arose as House Resolution 8300 rather than as a revenue Bill as dictated by the Constitution, Article I, section 7, clause 1, can become a positive law. See *Boday v. United States*, 759 F.2d 1472, 1476 (9th Cir. 1985). It is a fundamental principle of hermeneutics that all parts of a Constitution or any other legal instrument must be taken together and each part so interpreted as to give every other its natural force and meaning. Does the court assert the proposition that Article I, section 7, clause 1 is now inoperative but that Article III, section 2 retains its validity?

Halter submits that infringement of his inalienable First, Fourth, and Fifth Amendment rights constitutes irreparable injury. Cf. *Dombrowski v. Pfister*, 380 U.S. 479, 85 S.Ct. 1116 (1965). Petitioning for redress of grivances is his right.

CONCLUSION

For the foregoing reasons, petitioner Vincent Halter respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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January, 1986

APPENDIX A - Reference 1a

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED August 20, 1985

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

VINCENT HALTER, Plaintiff-Appellant, v. SECRETARY OF THE TREASURY OF THE UNITED STATES and Unknown Agents of the Internal Revenue Service, Defendants-Appellees.

NO. 84-2375. D.C. NO. C-83-20292 WAI. MEMORANDUM.

Before: ANDERSON, HUG, and REINHARDT, Circuit Judges.

Vincent Halter appeals the district court's dismissal for lack of subject matter jurisdiction of his suit to enjoin the Internal Revenue Service from requiring him to file a W-4 withholding form and from issuing summonses to his third party record holders. We affirm.

Submitted J une 12, 1985*

I

JURISDICTION

The Anti-Injunction Act, 26 U.S.C. § 7421(a), provides, in pertinent part, that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person. . . ." In *Stonecipher v. Bray*, 653 F.2d 398, 400-01 (9th Cir. 1981), *cert. denied*, 454 U.S. 1145 (1982), this court held that the Anti-Injunction Act bars suits to enjoin enforcement of W-4 withholding requirements. Because third party summonses are necessary or incidental to tax collection, the Anti-Injunction Act also bars suits to enjoin the enforcement of such summonses. *See Blech v. United States*, 595 F.2d 462, 466 (9th Cir. 1979).

*The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a) and Ninth Circuit Rule 3(f).

APPENDIX A - Reference 1a - Passim

In *Enochs v. Williams Packing & Navigation Co., Inc.*, 370 U.S. 1, 7 (1962), the Supreme Court held that the Anti-Injunction Act does not apply if the taxpayer shows that (1) the Government cannot prevail on its tax claim; and (2) he will be irreparably harmed if the injunction is not issued. Halter has made no showing of harm, or that the Government cannot prevail. Instead, Halter presents numerous, oft-rejected tax protester arguments to support his claim.

This court has rejected Halter's argument that wages are not income, *e.g.*, *Gattuso v. Pecorella*, 733 F.2d 709, 710 (9th Cir. 1984); issuance of summons under 26 U.S.C. § 7602 does not violate the fourth amendment, *e.g.*, *Donaldson v. United States*, 400 U.S. 517, 522 (1971); Halter is a person under the Internal Revenue Code, *e.g.*, *United States v. Romero*, 640 F.2d 1014, 1016 (9th Cir. 1981); TEFRA does not violate the origination clause, *e.g.*, *Boday v. United States*, 759 F.2d 1472 (9th Cir. 1985); the sixteenth amendment has been ratified, *see e.g.*, *Baldrige v. Shapiro*, 455 U.S. 345, 353 n.8 (1981). To the extend that Halter raises other cognizable arguments (i.e., the I.R.C. is not positive law), the arguments are frivolous. Halter has failed to present even a likelihood of success and cannot meet his burden to overcome the Anti-Injunction Act. The district court properly dismissed for lack of subject matter jurisdiction.

II

SANCTIONS

The Commissioner requests sanctions. This court has discretion to impose attorneys' fees and single or double costs as sanctions for bringing a frivolous appeal. Fed. R. App. P. 38; 28 U.S.C. § 1912; *Knigge v. Commissioner*, 756 F.2d 1377, 1379 (9th Cir. 1985); *DeWitt v. Western Pacific Rail Co.*, 719 F.2d 1448, 1451 (9th Cir. 1983). An appeal is frivolous, as here, where the result is obvious or the arguments on appeal wholly lack merit. *DeWitt*, 719 F.2d at 1451. Accordingly, Halter is ordered to pay the Treasurer of the United States the sum of $500 for attorneys' fees, and double costs, as a sanction.

AFFIRMED.**

**This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

APPENDIX A - Reference 2a

FILED July 26, 1984

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

VINCENT HALTER, Plaintiff, v. SECRETARY OF THE TREASURY of the UNITED STATES and Unknown Agents of the Internal Revenue Service, Defendants.

NO. C- 83-20292 WAI. ORDER.

In this action, plaintiff seeks to enjoin defendants from requiring a signed W-4 agreement be on file as a condition of his employment and from the issuance of summons to inspect his records and the records of third parties. By this decision, the court hereby ORDERS that this action is DISMISSED with judgment entered accordingly. Both parties' motions for sanctions are DENIED.

Plaintiff's claim falls within the prohibition of the Anti-Injunction Act, 26 U.S.C. § 7421(a), which states that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person. . ." This court is without subject matter jurisdiction to bear this action or to grant the relief requested. *Blech v. United States*, 595, F.2d 462, 467 (9th Cir. 1979).

The issue is whether plaintiff's action is "for the purpose of restraining the assessment or collection of any tax. . ." 26 U.S.C. § 7421(a). The Ninth Circuit, in *Blech v. United States*, 595 F.2d at 466, warned against a narrow interpretation of this phase, stating that to

> hold otherwise would enable ingenious counsel to so frame complaints as to frustrate the policy or purpose behind the Anti-Injuction Statute, a policy designed by Congress "to [protect] the government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference. . ." Likewise, this statutory ban against judicial interference with the assessment or collection of taxes "is equally applicable to activities which are intended to or may culminate in the assessment or collection of taxes." (citations omitted).

APPENDIX A - Reference 2a - Passim

The W-4 requirement and the issuance of summons to investigate records are both clearly activities which are intended to culminate in the assessment or collection of taxes. To enjoin them would interfere unjustifiably with the policy behind the Anti-Injunction Statue.

There exists a judicially created exception to Section 7421(a), but it is obvious that plaintiff's claim does not fall within it. To qualify under this exception, plaintiff must demonstrate irreparable injury and certainty of success on the merits. *Bob Jones University v. Simon*, 416 U.S. 725, 737 (1974). The complaint is so conclusory that it is impossible to determine whether there is a possibility of irreparable injury. However, it is obvious that plaintiff's claims have no merit.

Plaintiff appears to allege that the Secretary of the Treasury does not have statutory authority to promulgate the regulations which create the W-4 requirement and the summons power, and, if the statutory authority exists, the statutes are unconstitutional. With respect to statutory authority, Sections 3402(a) and 7602(a) of the Internal Revenue Code explicitly authorize the Secretary to promulgate the withholding and summons regulations, respectively. As to the constitutionality of the statutes, all courts have held that the withholding statute is within Congress' power. *See e.g. Beatty v. C.I.R.*, 667 F.2d 501, 502 (5th Cir. 1982). Similarly, Section 7602(a) has withstood all constitutional challenges. *See Howfield, Inc. v. United States*, 409 F.2d 694, 697 (9th Cir. 1969); *United States v. Union Nat. Bank*, 371 F. Supp. 763, 768-769 (E.D. Pa. 1974), *affirmed* 506 F.2d 1050, 1053 (3rd Cir. 1974).

DATED: July 26, 1984

WILLIAM A. INGRAM

UNITED STATES DISTRICT JUDGE

APPENDIX A - Reference 3a

FILED July 26, 1984

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

VINCENT HALTER, Plaintiff, v. SECRETARY OF THE TREASURY of the UNITED STATES and Unknown Agents of the Internal Revenue Service, Defendants.

NO. C- 83-20292 WAI. JUDGMENT

In accordance with the accompanying order, it is hereby ORDERED, ADJUDGED AND DECREED that this action is DISMISSED.

DATES: July 26, 1984

WILLIAM A. INGRAM

UNITED STATES DISTRICT JUDGE

APPENDIX A - Reference 4a

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED October 21, 1985.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

VINCENT HALTER, Plaintiff-Appellant, v. SECRETARY OF THE TREASURY OF THE UNITED STATES and Unknown Agents of the Internal Revenue Service, Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California

Before: ANDERSON, HUG, and REINHARDT, Circuit Judges.

The panel, as constituted in the above case, has voted unanimously to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the en banc suggestion and no judge of the court has requested a vote on it. FEd. R. App. P.35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.